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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,148	04/27/2001	Stephen Gold	1509-174	7315
7590 11/01/2004 LOWE HAUPTMAN GILMAN & BERNER, LLP (22429) Suite 310 1700 Diagonal Road Alexandria, VA 22314			EXAMINER CHU, GABRIEL L	
			ART UNIT 2114	PAPER NUMBER

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/843,148

Applicant(s)

GOLD ET AL.

Examiner

Gabriel L. Chu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-23 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) \*
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20040419 6
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. It is noted that Applicant has not traversed Examiner's assertion(s) of official notice. It is hereby clearly indicated that the common knowledge or well-known in the art statement is taken to be admitted prior art because Applicant has failed to traverse Examiner's assertion(s) of official notice. See MPEP 2144.04 C.

### **STATUS OF CLAIMS**

2. Claims 1, 2, 8-10, 12-14, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5469573 to McGill, III et al.
3. Claims 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6281894 to Rive.
4. Claims 3-7, 15, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5469573 to McGill, III et al. as applied to claims 1 and 14 above.
5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6281894 to Rive as applied to claims 22 above.
6. Claim 11 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1, 2, 8-10, 12-14, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5469573 to McGill, III et al. This rejection can be found in the previous office action.

10. Claims 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6281894 to Rive. Referring to claim 21, Rive discloses a data storage device divided into a plurality of partition areas; a primary operating system stored on a first said partition area (From line 15 of column 7, "The hard drive 52 is shown to include four partitions, namely a supported partition 54 from which a supported environment is implemented, an unsupported partition 56 from which an unsupported environment is implemented, a mirror partition 58 and an output partition 60. The partitions 54, 56, 58 and 60 may be defined utilizing the FDISK program, or any of a number of commercially available disk partitioning programs. The supported partition 54 is supported by a support service (e.g., an IT technical support company) and, in addition to the boot sector 28 and system files 30, includes operating system software 62 and application software 64. The supported partition 54 is distinguished in that the content of the partition 54, which implements a supported operating environment, is protected from user modification when the supported operating environment is implemented by the computer system 50 and the supported partition 54 is designated as the active

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partition."); a secondary operating system stored on a second said partition area (From line 51 of column 8, "Turning now to the unsupported partition 56, the content of this partition 56 is not protected from modification, by the user or otherwise, in that little or no restriction is imposed upon user access to the contents of this partition by the registry 40 or the policy file 41 for this partition."); said method comprising the steps of: storing as a back up copy a known good pristine copy of the primary operating system on a third said partition area (From line 66 of column 7, "The content of the mirror partition 58, which is an exact duplicate of original and supported content of the supported partition 54, is not executed, and the computer system 50 is not booted from the mirror partition 58. In this way the content of the mirror partition 58 is not subject to modification or corruption. It should be noted that the content of the mirror partition 58 (i.e., the persistent copy of the supported partition 54) may be the content of the supported partition 54 as originally installed.").

11. Referring to claim 22, Rive discloses the step of automatically updating configuration data stored in a fourth partition area of said data storage device (From line 5 of column 9, "Returning now to the output partition 60, in a manner similar to the unsupported partition 56, access to this partition by a user is not restricted, and this partition 60 is characterized in that it stores changing, or variable, information generated by at least the supported partition 54. This variable information may include, merely for example, output documents 70 of the application program 64 of the supported partition 54. These output documents 70 may comprise, merely for example, user-generated documents such as word processor documents. The output partition 60 also stores

configuration, data 72 required by the operating system 62 and the application program 64 of the supported environment. Certain applications access configuration and setting files that record user preferences and settings. For example, where the application program 64 is a browser, the user-specific "bookmarks" that are displayable by the browser application are stored as configuration data 72 within the output partition 60. Similarly, word processor, spreadsheet and many other application programs may access setting or configuration files that constitute the configuration data 72 stored within the output partition 60.").

***Claim Rejections - 35 USC § 103***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 3-7, 15, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5469573 to McGill, III et al. as applied to claims 1 and 14 above. This rejection can be found in the previous office action.

14. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6281894 to Rive as applied to claims 22 above. Referring to claim 23, Rive discloses the storage of configuration data (From line 5 of column 9, "Returning now to the output partition 60, in a manner similar to the unsupported partition 56, access to this partition by a user is not restricted, and this partition 60 is characterized in that it stores changing, or variable, information generated by at least the supported partition 54. This variable information may include, merely for example, output documents 70 of the application program 64 of the supported partition 54. These output documents 70 may

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comprise, merely for example, user-generated documents such as word processor documents. The output partition 60 also stores configuration, data 72 required by the operating system 62 and the application program 64 of the supported environment.

Certain applications access configuration and setting files that record user preferences and settings. For example, where the application program 64 is a browser, the user-specific "bookmarks" that are displayable by the browser application are stored as configuration data 72 within the output partition 60. Similarly, word processor, spreadsheet and many other application programs may access setting or configuration files that constitute the configuration data 72 stored within the output partition 60.").

Although Rive does not specifically disclose this configuration data can comprise data selected from the set: a network configuration data describing a networking configuration of the computer entity; an administration security data describing administration security settings applied to the computer entity; an installed user data describing installed users on the computer entity; a user settings data describing individual settings for at least one installed user on the computer entity; and a back-up schedule data describing a back-up schedule for backing up data of said computer entity, network configuration data, administration security data, installed user data, user settings data, and back-up schedule data are all well known forms of settings data.

Examiner takes official notice for these types of data. A person of ordinary skill in the art at the time of the invention would have been motivated to store and restore these types of data because they enable functionality specific to the computer and the restoration thereof facilitates continuity after disaster recovery. Further, from line 12 of column 9 of

Rive (with emphasis), "These output documents 70 may comprise, **merely for example**, user-generated documents such as word processor documents. The output partition 60 also stores configuration, data 72 required by the operating system 62 and the application program 64 of the supported environment."

***Allowable Subject Matter***

15. Claim 11 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

16. Applicant's arguments filed 02 August 2004 have been fully considered but they are not persuasive. Regarding Applicant's argument that McGill, III et al. do not disclose, either explicitly or inherently, a primary operating system in an "as manufactured" state, Examiner understands this argument to imply a specific type of manufacture, i.e., industrial, mass manufacturing (or the like). As claimed, Applicant has only used the term "as manufactured" without relying on any further limitation as to the type of manufacture. Manufacture merely implies the production of something (most broadly, "The making or producing of something" [The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company.]). However, even at its most narrow definition "1a. To make or process (a raw material) into a finished product, especially by means of a large-scale industrial operation. b. To make or process (a product), especially with the use of industrial machines." [The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992



by Houghton Mifflin Company.], the incorporation of "industrial" and "large-scale" need not be read into the term, even if the meaning is especial. As an example, an end consumer is able to assemble (make, produce; i.e., manufacture) his or her own computer, complete with OS, and has been able to for quite some time, and certainly before October 26, 2000. Furthermore, Applicant's specification does not specify "mass manufacturing" or any other necessarily industrial manufacturing means.

The term as used in the Application is contrasted with Applicant's own subsequent alternative use of the term "a known good pristine" copy, in addition to such extrinsic terms as "factory" and "originally manufactured", each of which have distinct and limiting definitions.

However, McGill et al. do contemplate factory installation (From line 15 of column 2, "The present invention can also be used to efficiently factory load a fully configured operating system, and application software, into similarly configured workstations on a production line.") and the installation of the original operating system (From line 58 of column 4 (with emphasis), "Depending on the type of operating system to be loaded onto the hard disk, the recovery diskette can actually be a set of several recovery diskettes, each diskette containing a particular sub-set of files. For instance, for IBM OS/2 v. 1.2, 1.3x the recovery diskette set is actually made up of two recovery diskettes, one bootable disk containing **a copy of the original OS/2 boot/install distribution disk files** and some system configuration files, and the other diskette containing all executable files necessary to run the recovery or loading process and other required resource files. In contrast, for IBM OS/2 v. 2.0, 2.x the recovery diskette set includes up

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to four recovery diskettes, depending on the system configuration. In this case, one bootable disk contains a direct copy of the original boot disk distributed with the OS/2 v. 2.0, 2.x. Another disk contains modified copy of the OS/2 v. 2.0, 2.x "Install" disk (minus some files, plus configuration info files). A third disk contains all executable files necessary to run the recovery or loading process of this invention, and other resource files. Yet a fourth disk containing format information is required if multiple versions of OS/2, with the OS/2 boot manager, are to be recovered or loaded into the hard disk.").

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6591376 to VanRooven et al.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel, Jr. can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gc

  
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